

## Biden's Trade Policies-Year One: Same as Trump's or More Aggressive?

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*After President Biden's first year in office, one big question is whether the Biden trade policy differs from the Trump chaos. My answer is no. I consider Biden's trade policy to be Trump without the tweets. They both relied on unilateral measures and broadened protectionist ones. In fact, Biden not only relies upon Trump's actions but also has expanded them. Trade policies have not changed much between Presidents Trump and Biden. In fact, Biden, relying upon Trump's actions, has kept them in place. There has been a slight change in tune: a little more reconciliation with Europe and the OECD. However, it is extremely difficult to identify any significant difference concerning China, Russia, and Iran. Has Trump's America First policy morphed into Biden's America First or worker-centric trade policy? It looks that way. Let's look at what Trump did, what Biden has done so far, and the challenges ahead.*

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## 1. Introduction

After President Biden's first year in office, one big question is whether the Biden's trade policy differs from the Trump's chaos. My answer is no. I would consider Biden's trade policy to be Trump's without the tweets. They both relied on unilateral measures and broadened protectionist ones. In fact, Biden has not only relied upon Trump's actions, but also has expanded them.<sup>1</sup>

During the past few months, trade issues have reemerged as high-priority domestic and foreign policy issues for the Biden administration. This is especially true regarding trade with China and how this relates to the US domestic economic and national security issues. Let's look at what Trump did, what Biden has done so far, and the challenges ahead.

## 2. Trump's Trade Policies

First and foremost, Trump launched a bizarre global tariff war. He imposed Section 232 steel tariffs on China and the US allies.<sup>2</sup> Trump also relied on a national security rationale under the US economic legislation in the most aggressive and weaponized way. He imposed Section 301 unilateral tariffs on a host of Chinese imports, after declaring existing Chinese intellectual property rights (IPRs) as unreasonable and discriminatory.<sup>3</sup> Additionally, Trump imposed antidumping and safeguard measures on other imports.<sup>4</sup> Most incredibly, he believed that foreign manufacturers paid the tariffs. Of course, in reality, American consumers paid them and higher import prices fed into consumer inflation. His Phase One agreement with China required China to increase purchases and to adjust foreign investment regulations in order to allow for greater investment by the US firms. This agreement is an unfortunate legacy of President Trump's tariff war. China's promises have not been met.

During his first week in office, President Trump withdrew from the Trans-Pacific Partnership (TPP). Then, he launched a ferocious war on the World Trade Organization (WTO), especially focusing on the dispute resolution system and its Appellate Body, in particular its interpretation of rules and reliance on precedent. This was highly unusual because the US was the principal architect of the rules-based trading system. The US's position at Uruguay reflected the DNA of the

American legal system: freely negotiated rules and a judiciary to litigate and resolve disputes which would prevent trade disputes from spinning out of control.<sup>5</sup>

Trump's assault on the WTO and its dispute resolution system was particularly bizarre because the US won two significant cases during Trump's tenure: one that China brought concerning Section 201 safeguard duties on solar panels imported from China,<sup>6</sup> and the other that the US brought against China with regard to tariff rate quotas on American agricultural imports to China.<sup>7</sup> China won its case concerning Section 301 tariffs regarding IPRs.<sup>8</sup> However, China's case against the US concerning Section 232 national security tariffs remains pending.<sup>9</sup> Over the last twenty-five years, the dispute resolution system has been the shining star of the WTO system, making up for the decline of the WTO's negotiating function.

President Trump engaged in a host of nontariff trade actions of significant concern. For example, he placed Huawei and ZTE, Chinese telecommunications firms, on the US Department of Commerce's Entity List, thus restricting their abilities to purchase the US products and technology. He also applied a multitude of restrictions to trade with Iran and tightened controls on trade with Cuba. He imposed some sanctions on China, which he proclaimed were intended to counter human rights abuses. The Trump administration heightened the review of inward foreign investments in the US under the Committee on Foreign Investment in the US (CFIUS).

Most significantly, President Trump broadly relied upon a national security rationale under legislation that delegated congressional authority to presidents to unilaterally impose trade sanctions. Those actions currently continue to generate legislative proposals to address President Trump's overreach in this area. Various statutory enactments use foreign policy or national security as grounds for presidents to impose trade sanctions. These include export control legislation,<sup>10</sup> the Trade Expansion Act of 1962,<sup>11</sup> and the International Emergency Economic Powers Act, among others.<sup>12</sup>

### **3. Biden's Trade Policies**

After one year, President Biden has barely changed any of President Trump's trade policies (even though the US rejoined the World Health Organization and the Paris

Climate Accord).<sup>13</sup> In fact, he kept the Trump trade policies in place and expanded upon them with an even greater protectionist fervor. These efforts have been accompanied by a Congressional push for a litany of measures promoting domestic manufacturing. President Biden has been more active than President Trump in utilizing sanctions to address corruption and human rights abuses.

The recently completed Democracy Conference highlights a new emphasis on international corruption as well as an increased focus on human rights as a basis for the US trade and foreign policy.<sup>14</sup> Specifically, the recently announced Export Controls and Human Rights Initiative calls for countries to align their policies on exports to confront human rights violations. As a means of restricting money laundering, Biden has also offered to tighten the US laws concerning the use of offshore corporations as well as foreign investment in the US real estate.<sup>15</sup>

New human rights sanctions have been imposed on China (for its violation of Uyghurs' human rights),<sup>16</sup> Myanmar, the Russian Federation, Cuba, and Cambodia. These sanctions were often imposed on a range of individuals under the Global Magnitsky Human Rights Accountability Act.<sup>17</sup> Indeed, a few days before Christmas 2021 President Biden signed new legislation toughening the importation standard for products from China's Xinjiang region, which produces the cotton yarn that is included in 1/5 of all globally sold cotton garments.<sup>18</sup>

Biden accepted the proposals from the Organisation for Economic Co-operation and Development (OECD) addressing multinational corporate taxation issues.<sup>19</sup> This acceptance was, in fact, a broadening of existing international tax policy. However, in part, it was a clear response and a corollary of Biden's renewed focus on domestic tax reform and on ensuring funding for his domestic agenda. Of course, this is one of a few examples of Biden reaching out to multilateral institutions in order to implement a gentler foreign policy.

The Biden administration has kept almost all of the Section 232 steel tariffs in place. Indeed, the administration reinstated duties that were previously reduced. Trade tensions continue with Canada and Mexico under the new United States–Mexico–Canada Agreement (USMCA).<sup>20</sup> (Trump dropped the steel tariffs against Canada and Mexico as a result of the USMCA.) President Biden initiated the cooling of tensions with the European Union (EU) when he somewhat settled the Airbus–Boeing WTO dispute, thereby relaxing tensions over digital taxation and Section 232 steel tariffs. (He also settled the WTO case brought by the EU concerning

Section 232 tariffs.) However, he then threatened the UK by refusing to drop these same tariffs due to his displeasure over its position concerning Northern Ireland and Brexit.<sup>21</sup> The newly established US–EC Trade and Technology Council<sup>22</sup> reflects a bit broader relaxation of tensions with Europe.

However, the Biden administration recently doubled tariffs on Canadian lumber entering the US.<sup>23</sup> The administration has not only entered into a new steel agreement with the EU that manages exports to the US,<sup>24</sup> as well as with Japan, but also expanded Buy American regulations early on that restrict foreign contractors in government procurement and most recently tightened labelling standards for “Made in America” meat products,<sup>25</sup> and renewed Section 201 safeguard tariffs on solar panels from China. Biden’s evolving semi-conductor and steel policies are reminiscent of the 1980’s managed trade approach of the US anchored by the 1986 US - Japan Semiconductor Agreement and the voluntary restraint arrangements (VRAs) restricting steel imports. These recent actions clearly raise the specter of the US returning to the managed trade policies, which Trump favored, when Japan was the ire of American politicians.<sup>26</sup>

President Biden has increasingly utilized sanctions for foreign policy and national security reasons. For example, he waived sanctions early on against the companies involved in the construction of the Nord Stream 2 pipeline, but he has now threatened to impose them in response to the threat of Russian military action against Ukraine.<sup>27</sup>

The Biden administration has favored increasing the US restrictions on outward investments, direct investment into US firms, and the US funds investing in Chinese securities. For example, it banned American investment in Chinese defense and surveillance companies such as SenseTime.<sup>28</sup> This is part of an aggressive implementation of Treasury Department (Office of Foreign Assets Control) sanctions.<sup>29</sup> In general, the Biden administration has aggressively utilized both the investment blacklist under the Treasury Department<sup>30</sup> and the entity list that the Commerce Department implemented.<sup>31</sup> There is a new and growing sense that outbound US investment flows could circumvent export controls in ways that could harm national security.<sup>32</sup> Of course, all of this raises the bigger question of use of sanctions as a foreign policy and national security tool.

Moreover, Biden has increasingly used CFIUS<sup>33</sup> to monitor inward Chinese investment and transactions.<sup>34</sup> Furthermore, the Biden administration has increased

pressure on regulatory agencies to delist Chinese companies from the New York Stock Exchange and the Nasdaq Stock Market.<sup>35</sup> For example, the Securities and Exchange Commission is increasing its review of the auditing compliance of Chinese firms. With new appointments to the Federal Trade Commission and the Antitrust Division of the US Department of Justice, more vigorous antitrust enforcement of international transactions is on the horizon, especially with a focus on national security concerns.<sup>36</sup> The Federal Communications Commission assesses potential national security threats to telecommunication services and has recently imposed additional restrictions on Chinese telecommunication companies.<sup>37</sup>

## 4. Conclusions

Little changed in trade policies between Presidents Trump and Biden. In fact, Biden, relying on Trump's actions, has broadened them. A slight change in tune has occurred: a little more reconciliation with Europe and international organizations. However, it is extremely difficult to identify any significant difference concerning China, Russia, or Iran. Has Trump's America First policy morphed into Biden's America First or worker-centric trade policy?<sup>38</sup>

The Biden administration is confronting various trade challenges: removing Trump's existing tariffs that are still in place; joining the revised TPP-the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)-especially now that China has just applied to join the CPTPP;<sup>39</sup> reengaging with the WTO, especially over the dispute resolution system;<sup>40</sup> enforcing the Phase One Agreement with China, particularly the purchase requirements;<sup>41</sup> and more forcefully confronting China's policies concerning state-owned enterprises and government subsidies. Most importantly, the Biden administration is supporting various congressional proposals, likely to be enacted soon, focusing on competing with China. If enacted they would amount to a monumental shift in the US trade policy as well as domestic industrial policy.<sup>42</sup> Other issues relating to trade are pending and growing in importance such as imposing newer export controls and financial sanctions on Russia because of the Ukraine crisis, global supply chains, on-shoring, renewing trade promotion authority, digital trade and taxation, Indo-Pacific trade arrangements, port congestion, climate change, a carbon tax, environmental issues,

and pandemics.

Here, several general points must be made. The first is that the US trade policy is best understood as being primarily a product of its domestic politics. Even though trade relations are an intricate part of global politics, China and Russia are now viewed with heightened concern, especially in the context of foreign policy and national security. Nevertheless, trade is directly connected to today's geopolitical reality. Second, a movement within Congress<sup>43</sup> and in the federal courts (where the US Supreme Court is now considering whether to review the issue of national security tariffs<sup>44</sup>) is now taking place to rein in the president's use of a national security rationale as the basis of trade sanctions. Third, this concern is part of a larger ongoing movement in Congress to reclaim Congress's trade power. Congress has exclusive trade authority under the US Constitution, but has unfortunately delegated much of this authority to presidents since the 1930s. Fourth, Congress is now concerned with reining in even more presidential powers after four years of the Trump administration.

I have two concluding comments. One is that exactly three months after September 11, 2001, a less recognized historical event took place. China joined the WTO on December 11, 2001, with many world leaders hoping that this would lead to greater trade liberalization. Only now has this come into a clearer historical focus of grave pessimism and not optimism. From China's accession to the WTO in December 2001 to December 2021 - twenty years later - a huge shift has taken place within the US public and political sentiment concerning China's entry into and participation in the global trading system. The attitude has shifted from optimism to grave concern. This is a shift from the "Washington Consensus of 2001" to the present "confrontational and protectionist consensus." A serious disillusionment exists throughout the American political establishment and public opinion in the US regarding China's role in both the global trading system and global affairs. The public and political sentiments in the US have changed the terms of debate which are very different from those surrounding China's accession to the WTO in 2001, even from Trump's inauguration five years ago. These concerns are highly toxic. The Biden administration has not developed a coherent, forward-looking strategy to manage trade relations with China

My second comment, in addition to seismic change in American perception of China, is related to the Democratic Party's control of the presidency and the House

of Representatives. During the past few decades, the Democratic Party has been decidedly weary of global trade and globalization and has supported promoting protectionism to enhance the wellbeing of workers and the middle class.<sup>45</sup> These attitudes firmly reflect the constituents and interest groups within the Democratic Party. This orientation has now coalesced and merged with the newly established protectionist and nationalistic orientation of the Republican Party, first birthed by President Trump. This is today's reality. There is seemingly a new political bipartisan skepticism toward multilateral trade cooperation. What specifically must the Biden administration do? A great deal. That is another story.

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dispute resolution system in the USMCA might create a more favorable feeling in the Biden administration toward international trade dispute resolution generally. See J. Zumbun, *U.S. Prevailed over Canada in Dairy Dispute Under New Trade Deal*, WALL ST. J., Jan. 1, 2021, <https://www.wsj.com/articles/u-s-prevails-over-canada-in-dairy-dispute-11641318427>. However, the WTO is about to authorize China to impose sanctions against the US in an Obama-era subsidies case (DS 437) brought by China. This could worsen the US sentiment against both the WTO and China. The EU has filed a new WTO action against China over its boycott of Lithuania (a member of the EU). See *EU Initiates WTO Dispute Complaint Regarding Chinese Restrictions on Trade with Lithuania (DS6101/1)*, WTO News Jan. 31, 2022, [https://www.wto.org/english/news\\_e/news22\\_e/ds610rfc\\_31jan22\\_e.htm](https://www.wto.org/english/news_e/news22_e/ds610rfc_31jan22_e.htm). This evidences that one of the closest allies of the US is still favoring working with the WTO's dispute resolution system and rejecting unilateral trade sanctions which is somewhat contrary to the US position. For a contrary opinion, see Editorial Board, *Europe Brings a Law Suit to a Trade Fight*, WALL ST. J., Jan. 29, 2022, <https://www.wsj.com/articles/the-european-union-brings-a-lawsuit-to-a-trade-fight-lithuania-china-world-trade-organization-11643319417>.

41. A. Swanson, *Biden's China Dilemma: How to Enforce Trump's Trade Deal*, N. Y. TIMES, Dec. 15, 2021, <https://www.nytimes.com/2021/12/15/business/economy/china-trump-trade-deal-biden.html>.
42. M. Sotomayor & J. Whalen, *Democrats Look for Bipartisan Deal on China Economic Bill as Rest of Agenda Flounders*, Washington Post, Jan. 27, 2022, <https://www.washingtonpost.com/politics/2022/01/27/democrats-china-competition>.
43. See Warner, *Toomey Reintroduce Legislation to Restore Authority over 'National Security' Tariffs*, Press Release of Mark R. Warner: US Senator from the Commonwealth of Virginia (Oct. 5, 2021), <https://www.warner.senate.gov/public/index.cfm/2021/10/warner-toomey-reintroduce-legislation-to-restore-authority-over-national-tariffs>.
44. *Transpacific Steel LLC v. United States* (US Supreme Court) (Docket 21-721) (petition for writ of certiorari filed Nov. 16, 2021), <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-721.html>. Various cases are under review by the Court of International Trade concerning Trump's Section 301 tariffs. See generally, N. Hart & B. Murrill, *Section 301 Tariffs on Goods from China: International and Domestic Legal Challenges*, CRS Report (No. LSB10553) (July 22, 2021), <https://crsreports.congress.gov/product/pdf/LSB/LSB10553>.
45. W. Walker & S. Anderson, *Joe Biden's Inflationary Trade Policy*, WALL ST. J., Jan. 4, 2021, <https://www.wsj.com/articles/joe-bidens-inflationary-trade-policy-tariffs-trump-prices-wages-workers-steel-aluminum-unions-big-labor-11641336748>.